

In the Matter of the Interest Arbitration

Between

TOWN OF TONAWANDA POLICE CLUB

and

TOWN OF TONAWANDA

Case Number: PERB IA88-28; M88-388

OPINION

AND

AWARD

04/28/89

CONCILIATION

Public Arbitration Panel: Wade J. Newhouse, Public Panel Member and Chairman
Charles Volk, Employee Organization Panel Member
Joseph Randazzo, Esq., Public Employer Panel Member

Representatives:

For the Employee Organization: Peter F. Klipfel, Town of Tonawanda Police Club
For the Village: Norman J. Stocker, Director of Labor Relations

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I. INTRODUCTION.

On January 17, 1989, the New York State Public Employment Relations Board (hereafter referred to as PERB), having determined that a dispute continued to exist in negotiations between the Town of Tonawanda and the Town of Tonawanda Police Club (hereafter referred to as the Club), and acting under the authority vested in it under §209.4 of the Civil Service Law, designated the above listed Public Arbitration Panel "for the purpose of making a just and reasonable determination of the dispute."

A hearing was held at 1835 Sheridan Drive, Town of Tonawanda, New York, on Friday, March 17, 1989. At the hearing, both parties were provided opportunity to introduce evidence, present testimony and to summon witnesses and engage in their examination and cross-examination.

On Monday, March 28, 1988 and again on Friday, March 31, 1989, the Panel met in executive session. A draft was circulated by the Chairman, and discussion continued during the next several weeks. On April 28, 1989 this Award and Opinion were issued.

II. THE STATUTORY STRUCTURE AND THE PROCESS.

It is useful to begin by sketching the statutory structure which governs this matter. Subdivision 4 of §209, of the Civil Service Law, was enacted to provide a means for resolving negotiations impasses between public employers in New York State and police and firefighters, as defined in the statute. Subdivision 4 provides that when PERB determines that an impasse exists, it shall appoint a mediator to assist the parties to effect a voluntary resolution of the dispute. If the mediator is unsuccessful within a stated period, either party may petition PERB to refer the dispute to a Public Arbitration Panel.

Section 205.4 of PERB's Rules and Regulations promulgated to implement Subdivision 4 of §209, requires that a petition requesting referral to a Panel contain:

- (3) A statement of each of the terms and conditions of employment raised during negotiations, as follows:
 - (i) terms and conditions of employment that have been agreed upon;
 - (ii) petitioner's position regarding terms and conditions of employment not agreed upon. * * *

The response to the petition must also "contain respondent's position specifying the terms and conditions of employment that were resolved by agreement, and as to those that were not agreed upon, respondent shall set forth its position." (Rules and Regulations, §205.5.)

If PERB refers the dispute to a Public Arbitration Panel, the Panel shall hold hearings on "all matters related to the dispute (§209.4(c)(iii)), and "all matters presented to the" Panel shall be decided by a majority vote of the members of the panel (§209.4(c)(iv)).

The Panel is directed to "make a just and reasonable determination of the matters in dispute." (§209.v(c)(v).) More specifically, the statute spells out the following criteria which must be taken into consideration, when relevant:

In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

- a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding

with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions

and with other employees generally in public and private employment in comparable communities;

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically,

- (1) hazards of employment;
- (2) physical qualifications;
- (3) educational qualifications;
- (4) mental qualifications;
- (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The Panel's determination is "final and binding upon the parties for the period prescribed by the panel". (§209.4(c)(vi).) The maximum period is for two years (from a point in time fixed by the statute), and the determination "shall not be subject to the approval of any local legislative body or other municipal authority". However, it is subject to judicial review "in the manner prescribed by law." (§209.4(c)(vii).)

III. BACKGROUND OF THE DISPUTE AND IDENTIFICATION OF THE ISSUES BEFORE THE PANEL.

The Town and the Club were parties to a collective agreement effective from January 1, 1987 until December 31, 1988 (§17.01).¹ Pursuant to §17.02 of that Agreement, negotiations for "renewal" were to commence "on or about August 15, 1988." Such negotiations were undertaken, and the parties met at least ten times. Negotiations were unsuccessful, and on November 25, 1988 the Club submitted to PERB a "Declaration of Impasse". The Town responded on December 12, 1988. The petitions were in agreement in identifying the proposals of each of the parties which were unresolved. As noted above, on January 17, 1989, PERB designated this Public Arbitration Panel to resolve the dispute.

At the hearing on March 17, 1989, the parties agreed that certain proposals had been withdrawn, and that the following issues remained open and for the Panel's consideration:

1. For convenience, at times that agreement may be referred to as the "expired" agreement, or "expired" contract, without intending to ignore the effect of Section 209-a.1(e) of the Taylor Law, concerning the maintenance of the status quo after expiration of an agreement.

CLUB PROPOSALS:

<u>Proposal No.:</u>	<u>subject.</u>	<u>Contract provision.</u>
#5	Salaries	§§7.01, 7.02
#8	Shift premiums	§ 7.07
#9	Longevity	§ 7.08
#10	Holidays	§ 7.09
#14	Uniform maintenance	§ 7.15
#19	Health Insurance costs	§ 11.01
#20	Health Insurance, retirees	§ 11.02
#21	Health & Welfare Fund	§ 11.06
#26	Bullet proof vests	[new section]
#30	Educational incentive	[new section]

TOWN PROPOSALS:

<u>Proposal No.:</u>	<u>subject.</u>	<u>Contract provision.</u>
#1	Managements rights clause	§ 2.01
#2	Computation daily pay rate	§ 7.04
#3	Longevity	§ 7.09
#5	Health Insurance costs	§ 11.01
#6	Transfers	§ 13.01
#8	Zipper clause	[new section]
#9	Salary/fringe benefits not retroactive	

For reasons which we hope will be clear from the discussion which follows, the opens issues have been grouped for consideration, as follows:²

- (1) Management rights clause (T1), transfers (T6), zipper clause (T8); educational incentive (C30); computation daily rate of pay (T2); and bullet proof vests (C26).
- (2) Health insurance for retirees (C20).
- (3) Salary (C5); longevity (C9, T3); shift premium (C8); holidays (C10); uniform maintenance (C14); Health insurance costs (C19, T5); Health and and Welfare Fund (C21).
- (4) Retroactivity (T9); period of agreement.

The following paragraphs from the post-hearing Brief submitted by the Town, are a fair and neutral statement of some general facts:

The Town of Tonawanda, hereinafter referred to as the "Town," is situated in Erie County, covers 19.8 square miles and has an approximate population of 91,269. Within the Town is the Village of Kenmore with a population of 18,474 and which employs its own Police department, so for the purpose of these proceedings, the Town is a Community covering 18.7 square miles, with a population of 72,795.

2. For convenience, Club proposals will hereafter be referred to as C1, etc., and Town proposals will be referred to as T1, etc.

The Town of Tonawanda Police Club, Inc., hereinafter referred to as the "Club," is the bargaining agent for 102 Police personnel; 64 Police Officers, 18 detectives, 13 Lieutenants and 7 Captains. There are various other non-Civil Service classifications within the Unit, * * *.

Contractual collective bargaining agreements have existed between the Town and the Club since January 1, 1969. * * *

The Town has three other employee groups; the Hourly Employees' Association, consisting of 219 Unit members, the Salaried Workers' Association, consisting of 180 Unit members and the Non-Union Administrative employees. The Salaried Workers have settled negotiations for 1989 and 1990 * * *. The Non-Union Administrative employees received a 5% increase, effective January 1, 1989. The Hourly Employees' Association is presently in negotiations with the Town.

IV. DISCUSSION AND DETERMINATION OF THE ISSUES.

A. MATTERS INAPPROPRIATE FOR INTEREST ARBITRATION, OR NOT YET RIPE, OR OF A ROUTINE NATURE.

1. Management rights (T1); zipper clause(T8); transfers (T6).

a. The Proposals and the Positions of the Parties.

The Town has proposed, (T1), a revision of the "Management Rights" clause in the current Agreement (§2.01), stating that its "intent is to clearly show the only items that are subject to interpretation in the grievance and arbitration sections of the contract are the clauses within this agreement between the parties."

The Town has also proposed, (T8), the addition of a "zipper" clause, stating that the current Agreement "contains no standard zipper clause * * *. There is no hidden intent, the words [of the proposed new section] speak for themselves."

Article XIII of the current Agreement is titled "Occupational Vacancies", and §13.01 concerns "Transferring & Assignment". The Town proposed, (T6), to add the following paragraph to that section:

The following considerations will be taken into account: skills, merit, ability, education, experience, seniority, job experience, productivity, and records of disciplinary action and absenteeism."

The purpose of the proposal is said to be, "to make everyone in the Unit clear as to the general qualifications the Town will be considering when transferring and assigning Police Officers."

b. Discussion and Determination.

In sum, management rights clauses and zipper clauses are not matters which interest arbitration panels should impose, in the absence of agreement between the parties. It would unduly extend this opinion, to review the possible litigation complications which must necessarily be considered as fallout from such provisions and the extent to which they do no more than restate existing law. Those types of provisions should come from the give and take at the negotiations table.

For similar reasons, the paragraph which the Town would add to the "transfer" provision of the current Agreement is not a matter which interest arbitration panels

should impose. Such a provision, for example, touches upon problems such as mandatory and nonmandatory subjects, as well as management prerogatives.

Determination. The Panel declines to impose the proposed revision (T1) to the management rights clause of the current Agreement; declines to impose the proposed zipper clause (T8); and declines to revise the transfer clause of the Current Agreement (T6).

2. Educational Incentive (C30).

a. The Proposal and the Positions of the Parties.

The Club proposed, (C30), the addition of an new section to the Agreement, which it identifies as an "educational incentive" provision. That new provision would read:

A Police Officer who is attending a N.Y. State accredited college and is going to receive college credit for courses, will be entitled to 100% of his/her tuition, not to exceed tuition cost of a full time resident student of the S.U.N.Y. system.

A copy of the tuition bill must be submitted to the Chief of Police to verify student enrollment and tuition cost. Tuition cost will be paid within 2 weeks of receiving the bill.

The Town responded that it "originally was going to consider an educational incentive, tied to Degrees, until the impact of Section 89 of the Internal Revenue Code was released." It now wants to put the matter on hold until that provision of the IRC is clarified and more fully understood.

b. Discussion and Determination.

Apart from the Town's concern about the status of such benefits under the Internal Revenue Code, the proposal by the Club is not sufficiently complete to be imposed by an interest arbitration panel. The provision, as proposed, does not address such matters as whether a course of study must be related to present job duties, whether payment would be conditioned on a level of performance in the course of study, whether there might be payback requirements in certain instances when conditions were not complied with, -- to identify only a few elements of the more typical type of "educational incentive" provision. Even if the Panel agreed with the core request, it would have to engage in rewriting the provision after considering matters not addressed by either party.

Given these shortcomings of this proposal, for purposes of consideration by an interest arbitration panel, and given the Town's concern as indicated above, and given the willingness of the Town to pursue the matter in negotiations, this proposal is a matter which should be dealt with at the negotiations table during negotiations for the next Agreement.

Determination. The Panel declines to impose the "educational incentive" proposal by the Club (C30), but recommends that the parties give the matter their careful attention during the next round of bargaining.

3. Bullet-proof Vests (C26).

a. The Proposal and the Positions of the Parties.

The Club has proposed, (C26), that the Agreement be amended by adding a new section to read as follows:

The Town shall supply each officer with a bullet-proof vest at no expense to the officer. The vest shall be the type that has been approved through the town bid process.

At the hearing, the Club stated that the presently approved vest costs approximately \$400, that there is some reimbursement from the State, and that the police officer pay approximately \$169. In responding to questions, the Club stated that officers are not currently required to require such vests, and that it is not seeking to impose a rule requiring the wearing of vests. Presently, the vests are acquired at the option of the individual officer; but under the proposal each police officer would be supplied with such a vest. The Club stressed the safety factor, and the importance of acquiring vests of sufficient quality that officers are not uncomfortable when wearing them -- lesser quality vests may be so uncomfortable that they discourage an officer from wearing the vest.

In its post hearing Brief, the Town responded to this proposal with the following data, and took the following position:

Soft Body Armor bullet-proof vests cost approximately \$388.50 each. The Town can apply for a reimbursement but is not guaranteed. If approved, it would be \$191.49 or a cost to the Town of \$197.01.

Full Cost -	\$39,627.00 + 1 1/4%
Town Share - if reimbursed)	\$20,095.00 - 3/4%

There is also an additional problem. The vests are fitted to each person. If someone gains weight, another vest would have to be ordered. In the event the panel considered this proposal, the Town feels the cost incurred by the Town should be a 50/50 ratio between the Town and the employee.

b. Discussion and Determination.

Much like the matter of "educational incentive", discussed above, the proposal for bullet-proof vests is not sufficiently developed for the Panel to either totally recommend it or to totally reject it. Understandably, the Club feels very strongly about this matter which is directly related to the safety of police officers; and the Town does not lightly dismiss the question of safety. However, there are a number of unanswered or -- possibly -- disputed questions which need resolution, in order to make a sound judgment on this matter, and those question, in part, touch upon the delicate issue of authority with respect to work rules. A decision on this proposal should not be made, without a more thorough exploration of the questions of costs, reimbursement, vest quality, possible sharing of cost, and the desirability of requiring -- or not requiring -- the wearing of such vests by all, or some, of the force.

The most effective and fairest manner of dealing with this matter is to provide for a "joint" committee which would research the matter and provide the parties the information which is necessary for effective negotiations, for the purpose of negotiating a Memorandum of Understanding for the second year of the Agreement. More specifically, the parties should be required to appoint a Joint Committee on Bullet-Proof Vests, to explore all relevant issues with respect to this matter. The Joint Committee would consist of four members, two appointed by the Town and two appointed by the Club. That

Committee would be required to issue a report, no later than October 1, 1989. The report could be unanimous; it could be partially unanimous and partially divided; or it could be entirely divided.

Following the issuance of the Joint Committee Report, the parties would be obligated to undertake negotiations with respect to the matter for a Memorandum of Understanding, which -- if agreed to by both parties -- would become effective for the second year of the Agreement, i.e., on January 1, 1990. That is, the parties would be obligated to undertake negotiations during the three months period from October 1 to December 31, 1988, with a deadline of agreement or impasse by January 1, 1990.

The above described schedule, reflects the negotiations schedule in the current Agreement, for the two calendar years 1987 and 1988, with agreement to begin negotiations for a successor agreement six months before the termination of the agreement (i.e., August, 1988). See §§17.01 and 17.02 of the current Agreement. Using a similar schedule, negotiations for the successor agreement to an Agreement for 1989-1990 would begin no later than August 1990. Thus, the negotiations for this Memorandum of Understanding would be completed before negotiations for a successor agreement would begin.

Determination. The parties shall form a Joint Committee on Bullet-Proof Vests, consisting of two members appointed by the Town and two members appointed by the Club. The Committee shall be appointed no later than June 1, 1989. The Joint Committee shall research all matters relevant to the manner of providing bullet-proof vests, the costs of such vests, and rules concerning the wearing of such vests, and issue a Report to the parties, no later than October 1, 1989. The Report is not required to be unanimous.

At appropriate times during the months of October 1989 through December 1989, the parties shall undertake negotiations for a Memorandum of Agreement concerning the provision of and wearing of bullet-proof vests, which if agreed to by both parties, shall become effective January 1, 1990.

4. Computation of Daily Rate of Pay (T2).

a. The Proposal and the Positions of the Parties.

Article VII of the current Agreement is titled "Compensation", and §7.04 ("Daily Rate") reads:

Daily rate of pay effective January 1, 1987, shall be obtained by dividing the basic annual salary by 261. Daily rate of pay effective January 1, 1988, shall be obtained by dividing the basic annual salary by 261.

The Town proposed, (T2), that §7.04 be revised to read as follows (indicated by underlining):

Daily rate of pay effective January 1, 1989, shall be obtained by dividing the basic annual salary by 260. Daily rate of pay effective January 1, 1990, shall be obtained by dividing the basic annual salary by 261.

The Town states that this "clause is amended each negotiations and historically reflects the number of work days in a year."

b. Discussion and Determination.

This is essentially a technical amendment of the Agreement. It is both logical and necessary. The Club offers no substantive reason for the Panel to reject this proposal.

Determination. Section 7.04 of the current Agreement shall be amended as proposed by the Town (T2).

B. HEALTH INSURANCE FOR RETIREES (C20).**1. The Proposal and the Positions of the Parties.**

Article XI of the current Agreement is titled "Insurance". Section 11.02 is titled "Accumulated Days", but deals with payment for health insurance for retired police officers. Section 11.02 presently reads:

Each Police Officer may accumulate a maximum of 150 days, the value of which may be used by a pensioned officer toward payment of premiums for health insurance for himself/herself and family. These accumulated days shall be acquired as follows:

Each Police Officer shall be granted five (5) accumulated days in each calendar year.

There shall be deducted from said five (5) days, one day for each day of absence, due to illness or injury, after a Police Officer has been absent due to illness or injury on more than three (3) separate occasions in that calendar year.

Partial sick leave days shall be debited to the nearest half-day used.

For the purpose of evaluating accumulated days, upon retirement each day accumulated shall be worth the value of one and one quarter (1-1/4) the average daily rate of the employee at that time. Effective December 31, 1986, upon retirement each day accumulated shall be worth the value of one and one-half (1-1/2) the average daily rate of the employee at that time. Effective September 1, 1987, each day accumulated shall be worth the value of one and three quarters (1.75) the average daily rate of the employee at that time.

The payment of health insurance premiums for a retired Police Officer shall only be made on behalf of a retired Police Officer who is not employed where similar health insurance is available to him/her without cost, except that when such employment terminates, his/her rights shall be reinstated. Premiums are to be paid only during the life of the pensioned Police Officer or to his widow upon death, but only until she remarries or until the value of his/her accumulated days have been exhausted.

If a national health insurance program is enacted to replace the present health insurance, this program of accumulated days shall be void and all accumulated days shall be lost.

The Club has proposed (C20) that §11.02 be amended. As amended it would read:

The payment of health insurance premiums shall be made on behalf of an employee who has retired and is collecting a New York State Retirement allowance or is receiving an Ordinary/Accidental Disability Retirement allowance and is not employed where similar health insurance is available to him/her without cost, except that when such employment terminates, his/her rights shall be reinstated. Premiums are to be paid during the life of the retired employee or his/her spouse upon the employee's death, but only until he/she remarries or dies. In addition if an employee dies before retirement his/her spouse shall have health insurance premiums paid on his/her behalf for three (3) years. If an employee dies as a result of work related injuries or illness his/her spouse shall receive the same benefits as if the employee had retired. An employee would not be eligible for this benefit if their spouse was receiving equal or better coverage at no cost and could cover our retiring employee. If an employee or spouse is not initially eligible for this benefit because the employee or spouse is receiving equal coverage, but circumstances change where coverage is no longer available without cost, then the employee or spouse would be eligible for town payment of health insurance.

If a National health insurance program of equal coverage is enacted the above provided payment shall cease for retired employees.

The deletion of the first five paragraphs in the present §11.02 eliminates the "bank" program. The substantive changes proposed are then highlighted by a comparison of the sixth paragraph of the current provision, with the changes made in that paragraph in the proposal. Deleted words are indicated by brackets, and words added are indicated by underlining. In addition, the first paragraph of the proposal has been broken into segments, in order to separate out the elements of the Club proposal, and part numbers have been added in the margin to facilitate reference to the parts of the proposal:

- [1] The payment of health insurance premiums [for a retired Police Officer] shall [only] be made on behalf of [a retired Police Officer] an employee who has retired and is collecting a New York State Retirement allowance or is receiving an Ordinary/Accidental Disability Retirement allowance and is not employed where similar health insurance is available to him/her without cost, except that when such employment terminates, his/her rights shall be reinstated.

Premiums are to be paid during the life of the [pensioned Police Officer] retired employee or [to his widow] his/her spouse upon the employee's death, but only until [she] he/she remarries [or until the value of his/her accumulated days have been exhausted.] or dies.

- [2] In addition if an employee dies before retirement his/her spouse shall have health insurance premiums paid on his/her behalf for three (3) years.

If an employee dies as a result of work related injuries or illness his/her spouse shall receive the same benefits as if the employee had retired.

- [3] An employee would not be eligible for this benefit if their spouse was receiving equal or better coverage at no cost and could cover our retiring employee.

If an employee or spouse is not initially eligible for this benefit because the employee or spouse is receiving equal coverage, but circumstances change where coverage is no longer available without cost, then the employee or spouse would be eligible for town payment of health insurance.

- [4] If a National health insurance program [is enacted to replace the present health insurance, this program of accumulated days shall be void and all accumulated days shall be lost.] of equal coverage is enacted the above provided payment shall cease for retired employees.

Consideration of this proposal needs to begin with a recognition of the New York State retirement plans which the Town has agreed to, which includes the Twenty Year Retirement Plan. See Article XII, of the current Agreement. Citations to various provisions of the Policemen's and Firemen's Retirement Law, and references to the details of those plans are not necessary. It is sufficient to note that the Town has agreed to the Twenty Year Retirement Plan.

The proposed change would eliminate the "bank" program and guarantee paid health insurance for retired police officers, except during the period of time when they were employed and as a consequence of that employment provided with similar health insurance without cost. The proposed change is explicit that "retired" status includes Disability Retirement. In addition, the benefit for the spouse of a deceased retired officer is comparably expanded. (See part [1].)

The proposal would extend the scope of the benefit beyond the current provision, by providing a benefit for the spouse of an officer who died before retirement, with the period of benefit dependent on whether the death was work related. (See part [2].)

The proposal would not provide the benefit for the retired officer if the officer's spouse had equivalent or better coverage, but would reinstate the benefit in those in-

stances in which it had terminated because of equal coverage elsewhere, in those instances in which such coverage was no longer available without cost. (See part [3].)

The proposal would retain the final paragraph of the current provision, concerning the possibility of a National health insurance program. (See part [4].)

Position of the Club. The Club focuses upon the fact that an officer retiring after twenty years will receive this benefit for a maximum of seven years under the "bank" plan, because the accumulated sick days used to pay for the benefit would have been exhausted. It compares the paid health insurance benefit for retirees in other units of Town employees, as well as that for retired police officers in the Town of Amherst. The intent is to provide paid up health benefits for retired officers and their families -- period. The Club also argues that this is a "no cost" item for up to as much as seven years, because the "money" (i.e., the accumulated days of unused sick leave) in the existing "bank" would cover the cost for that period.

Position of the Town. The Town's response, as summed up in the Town's post-hearing Brief, is as follows:

The present program has been working well. When this was negotiated the Town wanted some sort of incentive for officers to earn health insurance after retirement. So this program was agreed to tying in to absenteeism. To grant what the Club is requesting would be to remove all the absentee incentive, which is unacceptable to the Town.

The Town also notes in its comparisons, that the cost is very different with respect to other units where retirement is limited to 55 years or older. It also observes that the current "bank" plan had been increased by negotiating up the multiplier from "one" to "one and three-quarters". See the fifth paragraph of the current §11.02, above.

2. Discussion and Determination.

Apart from its intrinsic merit, this is a critical issue because the parties have made it so by their respective positions. The importance is in the perceptions of the parties, although arguments can be made in each case about the reality underlying the perception. But both parties have left no doubt about the "bottom line" nature of their positions.

The Club perceives a genuine need, and places a high priority on dealing with it, asserting that this high priority accurately reflects the membership's desire. It focuses on the twenty year retiree. It emphasizes the view that the twenty year retirement, at what might appear to be a relatively young age, is understandably a response to the burnout of employees in a high stress job. It comes close to insisting that "young is better". It argues that the Town benefits from the twenty year retirements, because the turnover increases the efficiency and effectiveness of the force -- and that the Town should have a self interest in making such early retirement attractive. But the Club stresses what it asserts is the fear of such retirement, when it may leave the retiree and dependent family unprotected by health insurance -- health insurance which such a retiree can ill afford to pay for.³

3. In those instances in which a twenty year retiree, possibly only in her or his mid-forties, simply moves to a "second" job, enjoying a salary in that position supplemented by retirement pay, the proposal continues to protect the Town in the same way that the current provision protects the town. If the "second" job is of any consequence, and not just a part time job, it should have such health insurance.

The Town, on the other hand, places a high value on the use of the program to reduce absenteeism for sick leave. This benefit was what persuaded it to agree to the "bank" program, and it is unwilling to see that "absentee incentive"⁴ lost. A plan which reduces the taking of sick leave, thus reducing absenteeism, increases the efficiency and effectiveness of the operation. It is this aspect of the present "bank" program which is the "incentive" for the Town to support it, and it is dead set against losing that benefit.

The Club counters by arguing that there are other plans by which to discourage employee absenteeism, and would cite statistics which it claims show that any reduced absenteeism on the force was not attributable to the "bank" plan in §11.02.

The Town counters the Club's position, by asking for some evidence of the need which the Club says motivates its position, and argues that the Club is engaging in pure speculation.

Both of these strongly held positions are founded, to some extent, on speculation. While the Club has sought to gather statistics with respect to absenteeism, that data was gathered after the hearing, and it is unwise to reconvene the hearing for the purpose of subjecting that evidence to cross examination, and for the purpose of asking for data with respect to future anticipated retirement situations. That would unduly prolong this proceeding, and it is likely that data with respect to both of the positions would not be determinative of the matter.

We begin with the fact that the Town has agreed to, and accepted, the idea of the possibility of a twenty year retirement for police officers. From that, it follows that there will be retired police officers who will inevitably have a longer span of retirement years than the span of retirement years for someone retiring at 55, and much longer than that of the employee retiring at 65. And from that fact, it inevitably follows that paid health benefits for retired police officers may be more costly, when comparing groups of employees, than paid health benefits for other retired employees. But the Town has undertaken to work with a Twenty Year Retirement Plan for police officers, and that possibly more costly benefit would seem reasonably to be a part of the undertaking.

But this leads to the obvious question: is the Club proposal the only way to deal with the perceived need? Could that need be adequately dealt with by increasing the multiplier, once again, that is, to more than 1.75%? That would continue to preserve what the Town believes is a useful "absentee incentive". But that technique will simply prolong the ultimate resolution of the matter of health benefits for retired officers, and leave open the matter of whether the present program truly serves the Town's perceived need with respect to "absentee incentive".

While the statistics on the type of benefit proposed by the Club, with respect to a state-wide pattern, are not published in some official form, it is common knowledge that in police forces across the state, paid up health benefits for retirees is a widely agreed to benefit, including those situations in which the municipality has agreed to the twenty year retirement plan. The Club proposal, when given such a high priority by the Club, is a reasonable one for the Panel to impose, with the clear recognition that it involves real costs for the Town which will be reflected in consideration of other benefits.

But this agreement with the Club *does not lead to complete acceptance of its proposal*. As broken down above, it is clear that the Club proposal would extend the coverage of

4. This is the accepted way of referring to this sort of incentive. Of course, the incentive is really to promote "nonabsentees", not "absentees".

§11.02 beyond "retirement" benefits, to include a paid up health benefit tied to death of an officer before retirement. See part [2], as segmented above. Those two sentences touch upon matters beyond the expressed concern of the Club, and the explicit arguments of the Club in explanation of the high priority it put on this proposal. *Therefore, that part of the proposal must be deleted.* The Club's interest in the matter dealt with in part [2] of its proposal must be dealt with in future negotiations, as is the case with respect to the Town's concern for an "absentee incentive" mechanism in the contract.

Determination. Section 11.02 of the current agreement shall be amended by deleting the entire language of the current provisions and substituting the following language:

The payment of health insurance premiums shall be made on behalf of an employee who has retired and is collecting a New York State Retirement allowance or is receiving an Ordinary/Accidental Disability Retirement allowance and is not employed where similar health insurance is available to him/her without cost, except that when such employment terminates, his/her rights shall be reinstated. Premiums are to be paid during the life of the retired employee or his/her spouse upon the employee's death, but only until he/she remarries or dies. An employee would not be eligible for this benefit if their spouse was receiving equal or better coverage at no cost and could cover our retiring employee. If an employee or spouse is not initially eligible for this benefit because the employee or spouse is receiving equal coverage, but circumstances change where coverage is no longer available without cost, then the employee or spouse would be eligible for town payment of health insurance.

If a National health insurance program of equal coverage is enacted the above provided payment shall cease for retired employees.

C. SALARY AND RELATED FRINGE BENEFITS.

1. Introduction: Consideration of the "Total Package" (the Matter Cost); Statutory Criteria and Comparative Data.

In its discussion of the proposed adjustment of salaries, the Town has stated its position with respect to the "total package":

The Town's portion as to any economic increase is 4.5% total package. This is more than fair. The Town of Tonawanda is not on top and should not be on top based on all the data presented to this panel. Any economic improvement over 4.5% must be substantiated and justified by this panel as prescribed by law.

The reference to "as prescribed by law", of course, is to the statutorily required criteria which a panel must "take into consideration" in making "a just and reasonable determination of the matters in dispute." Those criteria, set forth in §209.v(c)(v) of the Taylor Law were quoted above, but may be usefully repeated here:

In arriving at such determination, the panel shall specify the basis for its findings, taking into consideration, in addition to any other relevant factors, the following:

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding

with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions

and with other employees generally in public and private employment in comparable communities.

b. the interests and welfare of the public and the financial ability of the public employer to pay;

c. comparison of peculiarities in regard to other trades or professions, including specifically,

- (1) hazards of employment;
- (2) physical qualifications;
- (3) educational qualifications;
- (4) mental qualifications;
- (5) job training and skills;

d. the terms of collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

One relevant set of comparative data is "the wages, hours and conditions of employment" of other employees "performing *similar* services or requiring *similar* skills under *similar* conditions". It is "*similar*" skills, services and working conditions -- not *identical* working conditions, for example. And the reference to "wages, hours and conditions of employment" is *not* a requirement to tally up the total of "wages, hours and conditions of employment" into some single, all embracing tab of measurement which amalgamates total dollars, total hours, shift rotation, whether air conditioning in vehicles, interpersonal relations with superiors, etc., and then divides total per employee for a comparative counter. Intangibles are involved, and such an amalgamation -- even when seemingly dealing with the same factor, such as dollars -- can well be comparing apples and oranges. But more of that, when comparing the data offered by both parties, in considering the specific issues below.

Also, the "financial ability of the public employer to pay" is surely a criterion which must be "taken into consideration". But it is no secret that the realistic focus of this criterion is "inability" to pay. Moreover, note that the statute pairs that criterion with this one: "the interest and welfare of the public". In any dispute, and particularly in disputes concerning the security services, that criterion can cut both ways. The "interest and welfare of the public" may well be served by not increasing taxes -- but, then, it may well be served by promoting the effectiveness and efficiency of the police force in a way which requires increase of taxes.

Moreover, note that while the panel must "specify the basis for its findings", it is directed to do so by "taking into consideration" the enumerated factors, "in addition to any other relevant factors", *and no one factor is required to be the "basis for [the panel's] findings"*. The process is not a mechanical balancing of identified counters, on a simple scale with some mathematical like unit of measurement -- it is not as precise and free of value judgments, as a litmus paper test. This is a familiar conclusion to anyone who has reviewed the litigation involving challenged panel awards which have been upheld. Nevertheless, all of this is not to deny that the panel, necessarily, must view the total "package", the total "cost" -- to the extent that the "cost" can be translated into dollars -- and take that cost "into consideration".

2. Salaries (C5); Shift Premium (C8); Longevity (C9, T3); Holidays (C10); Uniform Maintenance (C14).

With respect to these issues, both parties have used comparative data which is specifically related to all of the issues. Article VII of the current Agreement is titled "Compensation". The following sections of that Article are the subject of these issues:

- Section 7.01 - 1987 Salary
- Section 7.02 - 1988 Salary
- Section 7.07 - Shift Premium
- Section 7.08 - Longevity Pay
- Section 7.09 - Holiday Pay
- Section 7.15 - Cleaning Allowance

a. The Proposals.

(1) Salaries (C5).

The salary schedules in the current Agreement are set forth in §§7.01 and 7.02, and provide as follows:

§7.01 - 1987 Salary

Effective January 1, 1987, the classifications and the basic annual salary schedule for Police Officers shall be as follows:

<u>CLASSIFICATION</u>	<u>BASIC ANNUAL SALARY</u>
Police Officer (First Year)	\$21,218
Police Officer (Second Year)	\$23,640
Police Officer (Third Year)	\$25,506
Police Officer (Fourth Year)	\$27,564
Police Officer (Range)	\$28,941
Police Officer (Records and Communications)	\$28,941
Desk Lieutenant	\$33,353
Detective	\$30,321
Lieutenant (Patrol)	\$33,353
Lieutenant (Criminal Investigation Bureau)	\$33,960
Captain	\$36,688



§7.02 - 1988 Salary

Effective January 1, 1988, the classifications and the basic annual salary schedule for Police Officers shall be as follows:

<u>CLASSIFICATION</u>	<u>BASIC ANNUAL SALARY</u>
Police Officer (First Year)	\$22,279
Police Officer (Second Year)	\$24,822
Police Officer (Third Year)	\$26,781
Police Officer (Fourth Year)	\$28,942
Police Officer (Range)	\$30,388
Police Officer (Records and Communications)	\$30,388
Desk Lieutenant	\$35,021
Detective	\$31,837
Lieutenant (Patrol)	\$35,021
Lieutenant (Criminal Investigation Bureau)	\$35,658
Captain	\$38,522



The Club proposed, (C5), that §§7.01 and 7.02 be amended to provide for salary increases of 7.5% for 1989, and 7.5% for 1990, respectively.

The Town has responded that all economic benefits must fit within a total package amounting to no more than 4.5%.

(2) Shift Premium (C8).

Shift premiums are provided for in the current Agreement, in §7.07, which reads as follows:

§7.07 - Shift Premium

In addition to the regular daily rate of pay, Police Officers shall be paid a shift premium as follows:

- a. Third (afternoon) shift - Thirty (.30) cents per hour for each hour worked.
 - b. First (night) shift - Thirty (.30) cents per hour for each hour worked.
- Effective 1/1/88 - Sixty (.60) cents per hr. for each hr. worked.

Split Shifts - A Police Officer assigned to work a split shift in which four (4) or more hours are worked during a premium shift shall be paid a shift premium for all hours worked at the higher premium rate applicable.



The Club proposed, (C8), to increase the amount paid for shift premium, by amending §7.07 to read as follows:

January, 1989, and thereafter, in addition to the daily rate of pay, Police Officers shall be paid a shift premium as follows:

- A) First Shift (Night) \$.80 per hour for each hour worked.
- B) Third Shift (Afternoon) \$.40 per hour for each hour worked.

Said premium shall be paid for all hours worked and also for days not worked due to the Officer being off duty because of the use of a vacation or personal leave day.

This would increase the premium for Night shifts from .60 cents to .80 cents, and for the Afternoon shifts from .30 cents to .40 cents. The proposal would also expand the payment, by the addition of the second paragraph, to apply in certain instances when the officer does not actually work a shift. However, it would eliminate the provision with respect to "split shifts", in the current version of §7.07.

(3) Longevity (C9, T3).

There are sharply contrasting proposals with respect to longevity. Longevity is provided for in the current Agreement, in §7.08, for each of the years of service from five through twenty, increasing by \$50 per year through the nineteenth year. That provision presently reads:

§7.08 - Longevity Pay

Each Police Officer will be entitled to longevity pay in accordance with the following schedule. Longevity payments shall be made by the Town each calendar year on the first or second pay day in November, at the election of the Town, if permitted by law.

Longevity Pay Schedule

Five (5) years of service.....	\$ 300.00
Six (6) years of service	\$ 350.00
Seven (7) years of service	\$ 400.00
Eight (8) years of service	\$ 450.00
Nine (9) years of service	\$ 500.00
Ten (10) years of service	\$ 550.00
Eleven (11) years of service	\$ 600.00
Twelve (12) years of service	\$ 650.00
Thirteen (13) years of service	\$ 700.00
Fourteen (14) years of service	\$ 750.00

Fifteen (15) years of service	\$ 800.00
Sixteen (16) years of service	\$ 850.00
Seventeen (17) years of service	\$ 900.00
Eighteen (18) years of service	\$ 950.00
Nineteen (19) years of service	\$1,000.00
Twenty (20) years of service	\$1,000.00

For the purpose of applying the above schedule to Police Officers, they must work one (1) week in the calendar year in which their anniversary date would occur to be entitled to longevity pay.



The Club has proposed, (C9), to amend §7.08, "in part", by both increasing the amount of the increment and removing the cap on the number of years, as follows:

Each Police Officer shall be entitled to a longevity payment of \$350.00 upon completion of five (5) years service and an additional \$50.00 for each year completed thereafter.

Thus, \$50 would be added to each of the longevity steps in the current schedule, set forth above, from five years through nineteen, the twentieth year would be increased by \$100, and the steps would could continue past twenty for the individual officer who has not retired before twenty years of service. For example, the step for the thirtieth year of service, under this proposal, would be \$1,600.



The Town has proposed, (T3), a reduction in the longevity schedule. It proposed the substitution of the following schedule for that currently in §7.08:

LONGEVITY PAY SCHEDULE

Five (5) years of service	\$ 300.00
Seven (7) years of service	\$ 400.00
Ten (10) years of service	\$ 500.00
Fifteen (15) years of service	\$ 600.00
Twenty (20) years of service	\$ 700.00

(4) Holidays (C10).

Section 7.09 of the current Agreement is titled "Holiday Pay". It provides that Police Officers shall be paid "an additional sum of money equal to the wage value of thirteen (13) paid holidays at time and one-half (1-1/2) of the daily rate." (Additional payment is made to an Officer required to work on any of the listed holidays.) The enumerated holidays are:

New Year's Day (Jan.)	Labor Day (Sept.)
Lincoln's Birthday (Feb.)	Columbus Day (Oct.)
Washington's Birthday (Feb.)	Veteran's Day (Nov.)
Good Friday (April)	Thanksgiving Day (Nov.)
Memorial Day (May)	Christmas Day (Dec.)
Independence Day (July)	Easter Sunday (April)

The thirteenth paid holiday is the "Employee's Birthday."



The Club proposed, (10), that §7.09 be amended, *by adding one (1) additional holiday to be designated as "Police Memorial Day", to be celebrated on May 15th.*

(5) Uniform Maintenance (C14).

Section 7.15 of the current Agreement is titled "Cleaning Allowance", and reads as follows:

Effective January 1, 1987, each Police Officer shall receive the sum of \$450.00, and effective January 1, 1988, each Police Officer shall receive the sum of \$500.00 for the cleaning of uniforms which shall be paid no later than February 15th of each year. This cleaning allowance shall be pro-rated on a monthly basis in the first and last years of employment.

The Club proposed, (C14), that §7.15 be amended in two ways -- to increase the amount of the payment, and to add a one time payment for officers assigned to the Detective Bureau. The section, as revised, would read (new words indicated by underlining):

Each Police Officer shall receive the sum of \$600.00 in 1989 and \$700.00 in 1990 for the cleaning of uniforms which shall be paid no later than February 15th of each year. This cleaning allowance shall be pro-rated on a monthly basis in the first and last years of employment.

In addition, Officers assigned to the Detective Bureau shall receive a one time disbursement of \$1,000.00 per man for the purchase of necessary clothing.

b. The Position of the Club.

For comparison of economic benefits, the Club argues that the most relevant comparison is with the Towns of Amherst and Cheektowaga, in Erie County, and it submits the following comparative data from the Agreements in those Town with their police units, using data for the same period represented by the current Agreement between the Town of Tonawanda and the Town of Tonawanda Police Club.

In the "Compensation Comparisons", the Club has used the salary for the 4th year police officer, for 1988, for each of the three towns. In each of the three chosen towns, there are four steps in the salary schedule for the "Police Officer" title.⁵

TABLE C1

<u>COMPENSATION COMPARISONS</u>			
	<u>Amherst</u>	<u>Cheektowaga</u>	<u>Tonawanda</u>
Salary	\$29,001	\$30,382	\$28,942
Holiday Pay	\$ 2,333	\$ 1,660	\$ 2,162
Shift Premium	\$ 520	\$ 693	\$ 583
Briefing Time	\$ 1,805		
Shooting Incentive	\$ 420		
Sub Total	\$34,079	\$33,189	\$31,867
Bi-Weekly Pay	\$ 1,310	\$ 1,276	\$ 1,218
Difference	+8%	+4.5%	
Vacation (\$/days)	\$ 2,777 (25)	\$ 2,490 (21)	\$ 2,217 (20)
Personal Leave	\$ 666 (6)	\$ 592 (5)	\$ 665 (6)
Dental	\$ 200	\$ 350	\$ 300
Uniform Maint.	\$ 625	\$ 490	\$ 500
Longevity	\$ 675	\$ 675	\$ 550
Education Incentive	\$ 522	\$ 100	
Sick Incentive			\$ 665
Total	\$39,544	\$37,886	\$36,584
Difference	+7.5%	+3.5%	

5. To facilitate references, the data submitted by the Club will be identified by Table numbers.

The Club has used the entire longevity schedules for comparison.

TABLE C2

<u>YEARS COMPLETED</u>	<u>LONGEVITY COMPARISONS</u>		
	<u>AMHERST</u>	<u>CHEEKTOWAGA</u>	<u>TONAWANDA</u>
5	475	375	300
6	475	375	350
7	575	375	400
8	575	375	450
9	575	375	500
10	675	675	550
11	675	675	600
12	675	675	650
13	675	675	700
14	675	675	750
15	900	1,075	800
16	900	1,075	850
17	900	1,075	900
18	900	1,075	950
19	900	1,075	1,000
20	900	1,075	1,000
TOTALS:	11,450	11,700	10,750

The Club has also submitted comparative data, with respect to these three town, for population and geographic size in relation to size of police departments.

TABLE C3

<u>LOCATION</u>	<u>COMMUNITY COMPARISONS</u>			<u>POLICE DEPT.</u>
	<u>POPULATION</u>	<u>SIZE SQ. MI.</u>		
Tonawanda, Town	83,800	19.8		101
Cheektowaga, Town	103,350	29.23		130
Amherst, Town	109,500	53.2		138

<u>POLICE DEPARTMENT PERSONNEL BREAKDOWN</u>						
<u>LOCATION</u>	<u>POL.OFF.</u>	<u>DET.</u>	<u>LT.</u>	<u>CAPT.</u>	<u>SGTS.</u>	<u>TOTAL</u>
Tonawanda, Town	62	18	15	6		101
Cheektowaga, Town	86	22	9	5	8	130
Amherst, Town	93	19	16	8	2	138

<u>RATIO OF POLICE OFFICERS TO POPULATION</u>			
<u>LOCATION</u>	<u>POPULATION</u>	<u># PO'S</u>	<u>PATROL</u>
Tonawanda, Town	83,800	62	1,351
Cheektowaga, Town	103,350	86	1,201
Amherst, Town	109,500	93	1,177

The Club also submitted comparative data, relating size of the towns -- both in population and physical size -- to police officer work.

TABLE C4

<u>LOCATION</u>	<u>RATIO OF COMPLAINTS PER OFFICER</u>		
	<u>COMPLAINTS</u>	<u>PATROL OFFICERS</u>	<u>CALLS/P.O.</u>
Tonawanda	26,143	62	421
Cheektowaga	26,401	86	306
Amherst	42,285	93	454

<u>PATROL OFFICERS RESPONSIBILITIES</u>			
<u>LOCATION</u>	<u>AREA</u>	<u>PEOPLE</u>	<u>COMPLAINTS</u>
Tonawanda	.31 sq. mi.	1,351	421
Cheektowaga	.33 sq. mi.	1,201	306
Amherst	.57 sq. mi.	1,177	454

Finally, with respect to "ability to pay", the Club has submitted data with respect to per capita income for 1979 in the Towns of Amherst (\$14,381), Cheektowaga (\$10,271)

and Tonawanda (\$\$11,595); and at the hearing the Club engaged in extensive analysis of the Town budgets and financial reports, in an effort to show that in certain balances there was more than sufficient funds to pay for the Club's demands.

Beyond the comparative data, in support of all its proposals, the Club emphasized the hazardous nature of the work, the importance of police work to the community welfare, and stressfulness of the job as compared to most other public employment positions.

Specifically with respect to holidays, the Club's position is based on the comparative data it submitted, which was reviewed above, and it points to Amherst and Cheektowaga police forces as having 14 paid holidays.

c. The Position of the Town.

With respect to the comparability-to-other-communities criterion, the Town asserts that it "is unique to other surrounding communities", and offers the following argument in support of that conclusion:

Erie County recently concluded a revaluation of Assessments, placing all communities at market value instead of varying percentages of value. Historically, industry had been receiving the greater burden of taxes and the result of revaluation would shift a large portion back to the homeowner. Needless to say, any community which is heavily industrialized, as the Town of Tonawanda is, would have a tremendous shift to the homeowner. The Town had three choices: (1) a tremendous tax increase to homeowners, approximately 24%; (2) shut down services and programs and reduce employment; (3) adopt a variation of revaluation under the Real Property Tax Law called "Homesteading." The Town chose a combination of all three.

The Town has experienced a general decline of its tax base over the past ten years mainly due to decreases in value in the industrial properties.

This Town can no longer be compared to the larger towns such as Amherst, Cheektowaga and West Seneca, because the other towns have a continued potential for residential and commercial growth, unlike the Town of Tonawanda, which is 90% saturated. Our industrial properties are generally older and larger, and therefore are not appreciating in value. Almost all of our major non-residential construction is exempt from taxes due to incentives granted by the Erie County Industrial Development Agency. TABLE 1 will show the declining tax base, State aid, Federal Revenue Sharing and Sales Tax the Town has incurred. In comparison, TABLE 1a, 1b, and 1c will show the increased taxable value the other larger Towns are receiving.

During the same period of time, the Town was experiencing a tremendous loss of industry, which resulted in the remaining taxpayers receiving the burden. To mention a few: Ashland Oil, Western Electric, Roblin Steel, General Motors Foundry, Frontier Industries, J.H. Williams, Recticel and Allied Chemical.

Due to revaluation by the County of Erie, the loss of major industries, the loss of taxes and Federal revenue saving (sic), the Town chose to adopt "Homesteading" provisions of the Real Property Tax Law. The only other communities in the area that chose Homesteading were: The City of Buffalo, City of Lackawanna, City of North Tonawanda and the City of Niagara Falls. The disadvantage of homesteading is that a higher burden remains on industry and commercial property, thus new industry or development of commercial property would be reluctant to come to the Town.

In its comparisons the Town will show surrounding communities. TABLE 2 will show each community, its population, (including Villages)

and Police force. TABLE 3 will show the breakdown of communities as to people per square mile and Police Officer per square mile. Note: The Town is approximately at the mid-point.

TABLE 1, submitted by the Town, includes the following data with respect to the "Total Tax Base" and Tax Rates for the Town of Tonawanda:

TABLE T1

Year	Total Tax Base	Homestead/Nonhomestead	Tax Rates	H/NH
1980	224,180,241		30.90	
1981	224,517,980		35.51	
1982	225,840,771		35.45	
1983	224,585,991		40.19	
1984	220,726,638		42.15	
1985	221,716,411		46.05	
1986	216,056,781		49.45	
1987	1,912,314,218	H: 1,180,656,345 NH: 731,657,873		H: 4.49 N: 8.19
1988	1,914,576,019	H: 1,182,397,482 NH: 732,178,537		H: 4.47 N: 8.16
1989	1,909,289,679	H: 1,186,969,881 NH: 722,319,798		H: 4.72 N: 8.76

The figures are actual tax base for 1980 through 1988, and budgeted tax base for 1989.

In TABLE 1a-1c, the Town offers the following comparison with "Taxable Value" in three other towns in Erie county:

TABLE T1a-1c

	----- Amherst -----		----- Cheektowaga -----		----- West Seneca -----	
	Taxable Value	Rate/M	Taxable Value	Rate/M	Taxable Value	Rate/M
1980	341,677,955	25.48	143,905,661	34.90	89,988,346	39.82
1981	346,995,599	27.84	145,253,348	40.69	89,339,499	43.95
1982	351,696,865	31.39	145,236,871	49.95	89,418,450	49.95
1983	356,915,947	35.87	146,333,758	63.99	89,765,671	63.27
1984	358,654,546	37.57	145,838,947	61.85	90,168,147	63.27
1985	362,745,794	38.45	145,418,790	63.30	90,605,894	64.05
1986	384,350,258	39.13	156,482,478	67.01	98,695,693	68.39
1987	2,866,624,238	5.43	1,980,587,652	4.82	976,070,937	7.13
1988	2,942,886,037	5.31	1,993,856,583	4.69	974,376,657	7.05
1989	3,473,308,687	4.7117	2,206,568,845	4.86	990,506,486	7.20

Like the Club, the Town submitted comparative data with respect to size and number on the police force (TABLES 2 and 3):

TABLE T2

TABLE T3

Location	Pop.	Size	Pol.	Police Force					People/ sq. mi.	Pol.O./ sq. mi.
				P.O.	Det.	Lt.	Capt.	Sgt.		
Tonawanda, Town	72,795	18.7	97	59	18	13	7		3,893	3.2
Cheektowaga, Town	96,674	25.9	123	88	17	9	5	4	3,733	3.4
Tonawanda, City	18,700	3.5	35	20	3	8	4		5,342.8	5.7
Kenmore, Village	18,500	1.5	28	19	2	4	3		12,333.3	12.6
Amherst, Town	114,000	54.0	134	95	21	16	7		2,111.1	1.8
West Seneca, Town	52,000	21.0	64	36	8	16	4		2,476	1.7

Specifically, with respect to the basic salary schedule, the Town compares the entire Tonawanda schedule with the schedules for five surrounding communities it feels

are comparable, arranged in the following table:⁶

TABLE T4

	<u>T.o.T.</u>	<u>Kenmore</u>	<u>City Tona.</u>	<u>Amherst</u>	<u>Cheektowag</u>	<u>W. Seneca</u>	<u>Average</u>
P.O. - 1	22,279	23,068	21,501	20,163	23,338	27,681	23,004
P.O. - 2	24,822	26,250	23,169	25,438	28,362	29,002	26,174
P.O. - 3	26,781	28,631	24,837	27,219	29,175	30,420	27,843
P.O. - 4	28,942		26,505	29,001	30,832		28,820
Detective	31,837	31,009	27,883	31,141	32,789	31,366	31,004
Lieut.	35,021	33,668	30,178	33,277	36,975	33,707	33,804
Lt.(Det.)	35,658			34,346		34,380	
Captain	37,894	37,104	32,832	37,894	40,675	35,720	37,125

In addition, the Town observes that a number of benefits converge to make up the "final compensation" for any individual officer, including longevity and any other similar factors; and it asserts that it is "virtually impossible" to compare these other benefits. However, the Town has acquired the "W-2" statements prepared for the federal income tax, showing the total of "wages, tips, other compensation", for two Captains, two Lieutenants, and ten Police Officers, from Kenmore, Amherst and Cheektowaga. After marking over the names on those W-2 forms, the Town submitted them as data, arranged to provide the following comparison of "final compensation":

TABLE T5

	<u>W-2 WAGE STATEMENTS 1988</u>				
	<u>T.o.T.</u>	<u>Kenmore</u>	<u>Amherst</u>	<u>Cheektowaga</u>	<u>Averages</u>
Pol. Officer	32,754	33,707	36,508	34,045	
	33,285	34,046	35,941	34,692	
	33,674	34,140	33,318	34,381	
	33,221	33,178	33,757	38,474	
	33,577	32,284	34,340	34,362	
	34,920	31,602	33,423	34,655	
	33,295	33,144	33,180	34,809	
	33,484	30,996	33,179	33,323	
	34,764	31,761	33,222	33,434	
	32,701	33,633		33,860	
Average -	(33,567)	(32,849)	(34,430)	(34,603)	33,848
Lieutenant	40,230	37,272	44,570	41,765	
	40,551	37,306	40,603	42,478	
Average -					40,597
Captain	43,429	43,119	46,031	47,010	
	39,728	40,689	46,884	49,320	
Average -					44,526

With respect to the cost-of-living factor, the Town quotes from the "most recent" report from the Bureau of Labor Statistics:

The Consumer Price Index for the New York - Northeastern New Jersey area edged down 0.2 percent in November. Since November, 1987, area consumer prices have risen 4.5 percent.

The Consumer Price Index for urban wage earners and clerical workers also edged down 0.2 percent in November. Over the past year, the CPI-W was up 4.2 percent.

Beyond the above data, the Town has also pointed to the impact on any comparison

6. The remaining data submitted by the Town was not labeled by number as Tables, but for reference purposes it will be identified by Table numbers subsequent to those used by the Town.

of total economic compensation which results from different types of schedules. Although precise data was not submitted, the Town has suggested that as a result of the Town schedule, police officers in the Town actually work fewer total days a year for the basic annual salary, than do officers in some of the compared communities.

Specifically with respect to the Club proposal concerning shift premium, the Town has responded with the following comparative data for police in surrounding communities, and non-police employees in other Town of Tonawanda units:

TABLE T6

	<u>Afternoon</u>	<u>Nights</u>
Kenmore	\$.25 each hour worked	\$.30 each hour worked
Amherst	\$.25 each hour worked	\$.40 each hour worked
West Seneca	\$.25 each hour worked	\$.25 each hour worked
Tonawanda	\$200 per year	\$300 per year
Cheektowaga	\$.25 each hour worked [not on court time or training time]	\$.35 each hour worked
T.T.H.E.A.	\$.30 each hour worked	\$.30 each hour worked
T.T.S.W.A.	\$.30 each hour worked	\$.30 each hour worked

The Town notes that the shift premium rate in the current Agreement is \$.30 per hour for each hour worked on either the afternoon or night shift, and asserts that the present rate is "the norm in the area".

Specifically with respect to the matter of longevity, the Town is proposing a reduction in the current longevity schedule, asserting that it "is on the high side and completely out of range from other Town Unit employees." The Town submits the following comparative data ("TTSWA" and "TTHEA" refer to Town units of non-police employees):

TABLE T7

<u>TTPol Club</u>	<u>TTSWA*----</u>	<u>TTHEA-----</u>	<u>Kenmore---</u>	<u>City Ton.-</u>	<u>Amherst---</u>	<u>Cheektowag</u>	<u>W.Seneca--</u>
1 yr- 300	1 yr- 200						
5 yr- 300	5 yr- 500	5 yr- 300	5 yr- 350	5 yr- 375	5 yr- 475	5 yr- 375	5 yr- 550
6 yr- 350							
7 yr- 400	7 yr- 600	7 yr- 400	7 yr- 400		7 yr- 575		8 yr- 600
8 yr- 450							
9 yr- 500							
10yr- 550	10yr- 700	10yr- 500	10yr- 500	10yr- 575	10yr- 675	10yr- 675	10yr- 650
11yr- 600							
12yr- 650							
13yr- 700							
14yr- 750							
15yr- 800	15yr- 800	15yr- 600	15yr- 600	15yr- 675	15yr- 900	15yr-1,075	15yr- 750
16yr- 850							
17yr- 900							
18yr- 950							
19yr-1,000							
20yr-1,000	20yr- 900	20yr- 700	20yr- 700	20yr- 775			20yr- 900
							25yr- 950

* TTSWA elected to take their dental money (\$200.00) in longevity.

On the basis of this data, the Town asserts that the Club is "a leader in the area", and it seeks a reduction so that longevity will "be more comparable with the other units in the Town."

Specifically with respect to the Club proposal concerning "holidays", the Town opposes it, observing that the Town now has the same as the majority of units used for comparison: e.g., Kenmore, City of Tonawanda and West Seneca have 13 paid holidays, as is the case in other Town of Tonawanda units.

Specifically with respect to the Club proposal concerning "uniform maintenance", the Town offers the following comparative data.

TABLE T8

Kermore	\$400.00
City Tonawanda	\$400.00
Amherst	\$626.00
Cheektowaga	\$490.00
West Seneca	\$600.00
Average	\$502.00

The Town notes that the uniform maintenance payment under the current Agreement is \$500, which means the Town is paying the average of the comparable communities.

d. Discussion.

(1) Comparability.

First, consider the information submitted by both parties, which relates to the following statutory criteria concerning "comparability" (§209.v(c)(v)(a)):

a. comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding

with the wages, hours, and conditions of employment of other employees performing similar services or requiring similar skills under similar working conditions

and with other employees generally in public and private employment in comparable communities.

The comparison of "wages, hours and conditions of employment" is to: comparable employees (i.e., other police officers); and to "other employees generally" in comparable communities.

While data comparing statewide settlement of salaries and other conditions of employment of groups of public employees, such as police, is frequently available and often submitted to interest arbitration panels, the parties in this dispute have limited their comparisons largely to police in other towns, villages or cities in Erie County, with somewhat different claims as to which are the most comparable, although the Town has also included limited reference to other public employees in the Town of Tonawanda. Therefore, the focus of the panel will be, primarily, on that comparative data.

The difficulties in reducing economic benefits to a single counter for comparative purposes, was noted above. Nevertheless, both parties sought to provide such a comparison.

The Club used the perspective represented in TABLE C1, set forth above. The several economic benefits were totaled for the title "Police Officer (Fourth Year)", and Tonawanda was compared to Amherst and Cheektowaga. Using that perspective, the Club claims the package in Amherst is 7.5% higher than in Tonawanda, and in Cheektowaga it is 3.5% higher than in Tonawanda.

However, there are some questions which may be raised about the Club's perspective. For example, a figure for "Shift Premium" is used. Does that figure represent the maximum possible an officer could earn as a result of the shift premium? More important, will every "P.O. 4" earn the maximum possible during one year? Another example is "Education incentive", which the Club is asking for and which is available in the other two Towns. Again, is this figure the maximum available? And, again, more importantly, how many officers actually will be taking higher education courses during any one year?

The Club chart (TABLE C1) also includes the maximum possible "sick incentive" for Tonawanda -- but will every officer accumulate the maximum? The Club points out that Amherst has dollars for "Briefing Time" and "Shooting Incentive", but at this point the Town can ask about comparative days worked during a year, which may be different because of different type schedules. If you remove the "shooting incentive" and "briefing time" from the Amherst column, and the "sick incentive" from the Tonawanda column, then the Amherst total is only 2.4% larger.

Finally, consider that the Club has chosen the "Salary" for the fourth year Police Officer. Why that title and grade? Why not, for example, Police Officer 2? Detective? Captain? Would the "Difference" on the Club chart be different if other titles are used? Why is Police Officer 4 the "representative" title? And for any title, the variance in the "longevity" schedules for particular years of service may well result in a different "Difference".

While acknowledging that it is "virtually impossible" to compare the total package of benefits, nevertheless, *the Town* also offers a representation of comparative "final compensation", but includes the Village of Kenmore as well as the Towns of Amherst and Cheektowaga. The Town's perspective is represented in TABLE T5, set forth above.

The Town's perspective is based on a comparison of "W-2" forms for 10 police officers, 2 lieutenants, and 2 captains. The questions which may be asked are obvious. As quoted above, the Town states there are 102 employees in the bargaining unit: 64 Police Officers, 18 Detectives, 13 Lieutenants and 7 Captains. Which 14 employees were chosen for this comparison? That is, what criteria or method was used for the selection of 10 of 64 Police Officers, 2 of 13 Lieutenants, 2 of 7 Captains, and no Detectives? Why that particular 14? Was the choice ("scientifically") random? More importantly, were the 10 Police Officers from each of the four governments all on the same longevity steps -- if not in total, then all number ones, etc.? Can we rest easy with an assumption that the 10 of 64 Police Officers are representative of the whole?

A quick calculation shows that according to the Town representation in TABLE T5, for Police Officers, the "average" for the several communities is less than one percent more than Tonawanda's average (.84%), that the Cheektowaga average is only 3% more than the Tonawanda average, the Amherst average is only 2.6% more, and the Kenmore average is less than the Tonawanda average.

Taken together, with all the questions raised by both representations, it is fair to conclude that there is not a dramatic conflict between the respective conclusions drawn by both parties. Amherst and Cheektowaga, in terms of "final compensation", are "ahead" of Tonawanda, as claimed by the Club. However, it is reasonable to conclude that they are *not* so significantly ahead as represented by the Club percentages, but that there *is* a greater difference than suggested by the Town's representation.

If we examine the basic salary schedule, as such, we have the comparison provided by *the Town*, in TABLE 4T, set forth above. The Town's comparison is broader than the Club's; it includes not only Kenmore in this comparison, but also the City of Tonawanda and West Seneca, in addition to Amherst and Cheektowaga. Tonawanda, the City of Tonawanda, Amherst and Cheektowaga have four steps for the "Police Officer" title, while Kenmore and West Seneca have three steps.

Tonawanda's beginning salary is 3.3% lower than the "Average", and 24.3% lower than the highest (West Seneca). However, it is 10.5% higher than the beginning salary in Amherst, while 4.8% lower than the beginning salary in Cheektowaga. But by the fourth step, the Amherst salary is .2% higher, and the Cheektowaga salary is 6.5% higher. The Tonawanda salary is higher at all four steps than the salary for Police Officers in the City of Tonawanda. West Seneca has only three steps, but begins higher than Tonawanda, and in the third year is higher than the Tonawanda fourth step. Kenmore has only three steps, and is higher on all three of those steps than Tonawanda, but the Tonawanda fourth step is higher than the Kenmore third step.

With respect to "Police Officers", this comparison tends to be compatible with the conclusions stated above with respect to the separate comparisons of "total compensation". While the Town can point to an "average" on the fourth step which is slightly lower than the Tonawanda salary, this cannot obscure the fact that the Tonawanda schedule is surely lower than those in Amherst, Cheektowaga, and West Seneca, while being higher than those in Kenmore and the City of Tonawanda.

If we look at "longevity" -- the most basic additional component to the basic salary schedule --, we find that *the Club* (in TABLE C2), simply sets forth the complete schedules for Tonawanda, Amherst and Cheektowaga, each having a longevity step for years 5 through 20. Then, the Club totals the amount an individual would receive in each Town, if that individual served for twenty years. Using those totals, the Club points to the 6.5% greater amount received in Amherst, than in Tonawanda, and the 8.8% greater amount received in Cheektowaga, suggesting Tonawanda is significantly lower.

But *the Town* (in TABLE T7), seems to focus on the annual increase in the longevity increment in Tonawanda, as compared to the increases on wider spaced anniversaries in the schedules for police personnel in the five communities it would use for comparison. (The reference in the Town Table to other Town units, will be noted separately, below.) From this data it concludes the Club is "a leader in the area".

The Club's representation suggests a significant difference. But note that while the Tonawanda schedule may begin with a lower figure, the annual increment increases to be larger than the Amherst schedule in later years. Moreover, the Club has only computed a total for the twenty year period of the schedule. If we assume thirty years of service, and add the longevity for those additional years, the total would be: \$20,450 (Amherst); \$22,450 (Cheektowaga); and \$20,750 (Tonawanda). Now, the Tonawanda total would be greater than the Amherst total. Moreover, when talking about dollars received over twenty years, such a flat computation does nothing to account for inflation and real dollar power. But the Town's representation obscures the fact that in those communities where the increment is increased only from three to five or six times, the increments are paid annually. Thus, as the Club representation demonstrates, one cannot truly characterize the Tonawanda longevity schedule as being a "leader" in comparison to the longevity schedules for police in comparable communities. Even when all five used by the Town are included, the Tonawanda schedule cannot be said to be in front of those in Amherst, Cheektowaga, and West Seneca.

With respect to "shift premium", *the Town* offered comparative data, in TABLE 6T, set forth above. Its representation includes data from the same five communities with respect to police forces, and, in sum, it shows that the Tonawanda rate compares well with whichever community is chosen. The Town's assertion that the Tonawanda rate is "the norm in the area" is no exaggeration.

With respect to "uniform maintenance" *the Town* offered comparative data, in TABLE T8, set forth above. Its representation contains data from the same five communities with respect to police forces, and on computing the average as \$502, the Town concludes that it is "paying the average of comparable communities", since the amount paid under the current Agreement is \$500.

That is true, but of the two Towns used by the Club for comparison, note that Amherst is the leader of the five communities used by the Town, at \$625, and Cheektowaga is just under Tonawanda, at \$490. However, West Seneca is also significantly higher, at \$600. And it is the Village of Kenmore and the City of Tonawanda which account for the average being equivalent to the Town of Tonawanda's payment, because of their significantly lower payments of \$400. Thus, the Tonawanda payment of \$500 is lower than they average of Amherst, Cheektowaga and West Seneca, which is \$572.

In support of its proposal for a one time disbursement for Detectives, *the Club* argues the extra cost for purchase by officers serving as Detectives, of civilian clothing to wear while on duty, is substantial because of the requirement that Detectives wear suit coat or suit jacket with tie; that such officers still must pay for the cleaning for maintenance of those clothes, which consumes the uniform maintenance payment.

The Town responds that this demand would cost in excess of \$10,000 in each year, "equally 1/3% in 1989 and 1/3% in 1990."

Both parties submitted comparative data related to the workload and nature of the work of police officers. As with economic data, *the Club* looked to a comparison with the towns of Amherst and Cheektowaga, while *the Town* added the Town of West Seneca, the City of Tonawanda and the Village of Kenmore. The Town data is in TABLES T2 & T3, and the Club data is in TABLES C3 & C4, set forth above.

While organized somewhat differently, on closer examination both parties appear to have submitted data in almost identical categories. Unfortunately, the numbers are not always the same. The numbers may be rearranged, and compared, in the following manner (the line with information submitted by the Club will be identified by "C", and the line with Town information by "T"):

		Town of Tonawanda	Town of Cheektowaga	Town of Amherst	Town of West Seneca	City of Tonawanda	Village of Kenmore
Population	C T	83,800 72,795	103,350 96,674	109,500 114,000	52,000	18,700	18,500
Size (sq.mi.)	C T	19.8 18.7	29.23 25.9	53.2 54	21	3.5	1.5
# in Pol.Dept.	C T	101 97	130 123	138 134	64	35	28
# in titles:							
Police O.	C T	62 59	86 88	93 95	36	20	19
Detective	C T	18 18	22 17	19 21	8	3	2
Lieutenant	C T	15 13	9 9	16 16	16	8	2
Captain	C T	6 7	5 5	8 7	4	4	3
Sgt.	C T		8 4	2			
Pop. per P.O.	C	1,351	1,201	1,117			
Pop. per sq.mi.	T	3,893	3,733	2,111	2,476	5,342	12,333
# Pol. Patrols	C	62	86	93			
Sq.mi. + pop.	C	.31	.33	.57			
Pop. + sq.mi.	T	3.2	3.4	5.7	12.6	1.8	1.7
# complaints calls/P.O.	C	26,143 421	26,401 306	42,285 454			

In its data concerning "longevity", *the Town* has included a comparison to the longevity for two other units in the Town of Tonawanda. (TABLE T7, set forth above.) And it asserts that the current police longevity schedule is "completely out of range from other Town Unit employees." Thus, the Town seeks to *reduce* the current schedule. As noted above, comparison, when relevant, may also be made to "other employees generally".

However, keep in mind that the Taylor Law [§209.v(c)(v)(c)] also includes this comparative criterion:

c. comparison of peculiarities in regard to other trades or professions, including specifically,

- (1) hazards of employment;
- (2) physical qualifications;
- (3) educational qualifications;
- (4) mental qualifications;
- (5) job training and skills.

The recognized hazards and stress of the job of police, are justifications under this separate criterion for distinguishing the gap which might appear in the longevity schedules for police and other unit employees in the Town of Tonawanda. Comparisons with

"other employees generally" in Tonawanda can reveal numerous differences in benefits which may be justified by reference to this criterion. The special status of security forces, due to the hazards and strains of the profession, is a legitimate and persuasive factor to be taken into consideration.

The difference between the longevity increments for the Club in the Town of Tonawanda and the longevity increments for "other Town Unit employees" is not sufficient justification to support the Town proposal to reduce the Club schedule.

██████████

Conclusion. A careful review of the above comparative data, supports the Club position that the most comparative communities are Amherst and Cheektowaga. And a review of the comparative data for those three communities, supports -- to some degree -- the Club contention that the total economic packages for the Amherst and Cheektowaga police forces are worth more dollars. However, as pointed out, the difference is not nearly as significant as the Club argues, and the difficulty in comparing specific elements of the total package counsels against any general across the board "percentage" factor needed to "catch up".

(2) "the interests and welfare of the public and the financial ability of the public employer to pay".

While the Taylor Law does refer to "the financial ability of the public employer to pay", in setting forth the criteria which must be "taken into consideration" when relevant, this criteria is coupled with "the interests and welfare of the public". (§209.v(c)(v)(b)). That reference to "interests and welfare of the public" can, of course, cut both ways. It is supported by restraint in increasing taxes; but it is also promoted by efficient and effective security forces, and the efficiency and effectiveness of the police force is not unrelated to economic benefits for the police force.

The Town has submitted an extended argument and extensive data concerning the Town's "ability to pay" (or, as is said to be the "real" question, its "inability to pay"). Its arguments and data, in TABLE T1 and TABLES T1a-c, have been set forth above. It emphasizes declining tax base, declining State and Federal aid, and rising tax rate. As noted above, *the Club* engaged in extensive analysis of Town budgets and financial reports, at the hearing, in an effort to show that in certain balances there was more than sufficient funds to pay for the Club's demands; and the Club also submitted data with respect to per capita income in the Towns of Amherst, Cheektowaga, and Tonawanda.

Conclusion. In sum, the Town has not pointed to any statutory or constitutional restriction which would prevent it from increases taxes -- it has not reached its permissible limits. However, the Club cannot refute the fact of a declining tax base and the fact of real need for restraint on expenditures as a result of the current economic climate. The Club's position about existing balances has not been entirely refuted by the Town explanations; but the Town can properly point to the fact that the benefits being considered are not one time, one shot payments -- they will be indefinite commitments, and a balance today does not necessarily mean a balance tomorrow.

Not untypically, in this type of dispute, it is a fair to conclude that the union demands are not, in fact, beyond the "ability" of the government to pay; but it is equally fair to conclude that "ability" to pay is not, alone, sufficient justification for agreeing to demands. In other words, the "ability of the Town to pay" should not be the determinative factor, one way or the other, with respect to any of these issues. Restraint, yes -- impossibility, no.

e. Determinations.

Taking into consideration the comparative data submitted by both parties, and the carefully constructed arguments of both parties, as well as other relevant statutory criteria (such as "the terms of collective agreements negotiated between the parties in the past", §209.v(c)(v)(d)), the following determinations are made:

(1) Salaries. The salary schedule in §7.02 of the current Agreement, set forth above, shall be amended to provide that: (1) effective January 1, 1989, the basic annual salary schedule shall be increased on all titles and steps by 5.5%; and (2) effective January 1, 1990, the basic annual salary schedule shall be increased on all titles and steps by 5.5%. This determination is *retroactive* to January 1, 1989.

The determination that the across the board salary increase should be 5.5% in each of the two years, is made with the fact in mind that a determination is also made to impose the paid up health benefit upon retirement, which was such a high priority for the Club. That benefit can be the source of future, significant costs for the Town. But it may be asked, given that proposition, why as much as 5.5%? This determination also takes into consideration the fact that the comparative data does suggest that the Town of Tonawanda police force is somewhat "behind" the most comparable forces in Amherst and Cheektowaga, although this determination will not necessarily make the Tonawanda total benefits "equal" in dollars. The determination also considers the pattern of state-wide settlements with respect to police forces. Unfortunately, those settlements are no longer officially published in circular form. However, reported across the board salary increases for police forces throughout the state, indicate that the state-wide average is in the neighborhood of 6.5%. But such an "average" figure does not provide us with comparisons of specific communities and total economic packages. Such "averages" suggest, at best, a pattern of settlement which may indicate whether a particular settlement is significantly out of line -- i.e., excessively large or excessively low. With that pattern in mind, and being aware of the general state-wide economic situation as reflected in current discussions between the Governor and the Legislature; if we take into consideration the data submitted by the Town concerning its economic situation, and the specific data submitted by the parties with respect police forces in the most comparable communities, remembering other benefits imposed by this Panel, such as paid up health insurance for retirees, then the 5.5% general salary increase is a reasonable compromise.

(2) Shift premiums. The Club proposal is denied, and the shift premiums provided for in §7.07 of the current Agreement shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

(3) Longevity. The Club proposal is denied, and the longevity schedule in §7.08 of the current Agreement shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

(4) Holidays. Given the internal problems which would be caused for the Town -- even though benefits for "other Town Unit employees" can be distinguished because of the uniqueness of the police profession --, and given other benefits imposed by this Panel, the Club proposal is denied. The holiday schedule in Section 7.09 of the current Agreement shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

(5) Uniform maintenance. Section 7.15 of the current Agreement, titled "Cleaning Allowance", is amended to provide that the amount received by each Police Officer in 1989 shall be \$600.00, and the amount received in 1990 shall be \$650.00.

The Club proposal with respect to a one time disbursement to officers assigned to the Detective Bureau is denied.

3. Cost of Health Insurance (C19/T5).

a. The Proposals and Positions of the Parties.

Section 11.01 of the current Agreement is titled "Health Insurance", and originally read as follows (paragraph numbers added to facilitate reference; markers A, B, and C added in the margin):

[A] [¶1] The Town shall continue to provide health insurance which shall include Blue Cross benefit coverages identified as Class 4 and 6; Blue Shield benefit coverages identified as Class 82 and 83; \$50.00 deductible, \$1,000,000 Major Medical Rider; \$1.00 co-pay Prescription Drug Program, Rider 8 (dependent children up to age 23); Rider 16 (psychiatric). Effective January 1, 1986, the \$1.00 co-pay Prescription Drug Program will become a \$3.00 co-pay Prescription Drug Program. Also effective the same date, commence Rider 4 (Emergency Accident Care and Outpatient EKG Exam) and Rider 12 (Outpatient Lab and Pathological exam).

[¶2] If the monthly premium rates effective January 1, 1987 for the above identified health insurance coverage increases during the life of this Agreement more than twenty (20) percent, the increase over the twenty (20) percent will be negotiated by the parties to determine who will pay the additional premium rates. The co-pay Prescription Drug program will not be included in the twenty (20) percent computation.

In prior, separate negotiations, the parties had agreed to the following amended version of §11.01 (with paragraph numbers added to facilitate reference):

Effective January 1, 1989, Article XI, Section 11.01 shall read, unless changed in the current collective bargaining negotiations, as follows:

[B] [¶1] The Town shall provide health insurance which shall include Blue Cross benefit coverages identified as Class 4 and 6 (hospital); Class 90 and 91 (medical/surgical); \$100.00 deductible, \$1,000,000 Major Medical Rider, \$2.00 co-pay Prescription Drug Rider, Rider 4, (Emergency Outpatient EKG) Rider 8 (dependent children to age 23), Rider 21 (psychiatric), Rider 22 (ambulatory care).

[¶2] If the monthly premium rates effective January 1, 1989 for the above identified health insurance coverage increases during the life of this Agreement more than twenty-five percent (25%), the increase over the twenty-five percent (25%) will be negotiated by the parties to determine who will pay the additional premium rates.

[¶3] When an eligible employee under the Collective Bargaining Agreement chooses to enroll in a health maintenance organization the Town offers, such as Independent Health Association, Blue Cross' HMO Community Blue or Health Care Plan, Inc., and the monthly premium rate is over the Town's general plan, as provided in the first paragraph of this section, the Town will assume the additional cost, except as provided in Article V, Section 5.06.

The Club begins from the second quoted version of §11.01, tentatively agreed to in previous negotiations, and has proposed (C19) to delete paragraph 2. It would keep the first paragraph (no reference is made to the third paragraph).

The Town has proposed (T5) a further revision of §11.01, reverting in part to the original provision. The amended version proposed by the Town reads as follows (with paragraph number added):

[C] ¶1 The Town shall continue to provide health insurance which shall include \$100.00 deductible, One Million Dollar Major Medical Rider; \$3.00 co-pay Prescription Drug Program, Rider 8 (dependent children up to age 23); Rider 16 (psychiatric), Rider 4 (emergency accident care and outpatient EKG exam), and Rider 12 (outpatient lab and pathological exam).

¶2 If the monthly premium rates effective January 1, 1989 for the above identified health insurance coverage increases during the life of this agreement more than 20%, the increase over the 20% will be negotiated by the parties to determine who will pay the additional premium rates.

¶3 A Police Officer will not be eligible for health insurance coverage through the Town if the Police Officer could be covered with comparable coverage through his or her spouse or parent. If it is determined that a Police Officer could have been covered by another plan, he or she would be responsible to reimburse the Town from the date they could have been covered by another plan. If, at some later date, it is proven that the spouse, or parent, is no longer eligible for coverage, then the Police Officer shall be considered eligible for coverage under the Town's plan as provided in this contract.

The Town states that there are two areas which it would like consideration in curtailing future increased costs. It would return ¶2 of the recently negotiated version to the 20% factor, rather than 25%, which is claimed to be "a more appropriate bench mark that would trigger future negotiations." The ¶3 in its latest proposal, is said "not [to] harm the employee in any way, because he would have coverage elsewhere."

b. Discussion and Determination.

The Town asserts that ¶3 of its proposal would "not harm the employee in any way, because he would have coverage elsewhere." However, this type of proposal can put the employee in the crossfire between two employers. There is no convincing evidence that the "other" employer would be willing to pick up this cost -- and suppose the "other" employer has a similar limitation in its benefit, which would prevail?

No good reason has been offered to change the agreement reached in prior, separate negotiations with respect to this benefit.

Determination. Section 11.01 of the current Agreement shall be amended by substitution of version [B], above, agreed to in prior, separate negotiations.

4. Health and Welfare Fund (C21).

a. The Proposal and Positions of the Parties.

Article XI of the current Agreement is titled "Insurance." Section 11.06 is titled "Dental Plan", and provides as follows:

The Town agrees to contribute \$250.00 towards a dental plan for each unit member, per year in 1987 and \$300.00 per member in 1988. The contribution shall be fully paid into the fund by January 31 of each year.

The Club has proposed (C21) to revise the scope of this benefit, by amending §11.06 to read as follows:

The Town agrees to contribute \$400.00 towards a Health and Welfare Fund for each unit member, per year in 1989 and \$500.00 per member in 1990. The fund would be administered by the Club and the Town's contribution shall be paid into the fund by January 31 of each year.

At the hearing, the proposal was described as "essentially" a dental plan, despite the change in name, with the funds being paid to the Club which would, in turn, pay the dental bills.

b. Discussion and Determination.

In light of other benefits imposed, including the Club proposal with respect to the "Cost of Health Insurance", the panel declines to impose the Club's proposal.

Determination. Section 11.06 of the current Agreement, titled "Dental Plan", shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

D. THE MATTER OF RETROACTIVITY.

The Determinations and Awards of this Panel are retroactive to January 1, 1989, as indicated in the enumeration of Awards, below.

**V. THE "PERIOD PRESCRIBED" FOR THE PANEL DETERMINATION;
CONTINUATION OF EXPIRED CONTRACT.**

This Award is for a two year period, beginning January 1, 1989 and ending mid-night December 31, 1990. During that period, the expired contract between the parties shall continue to be in effect, except in those instances in which it has been changed by the determinations of this Panel. Where relevant, in those instances in which the expired contract has not been changed, dates specified during 1987 shall be read as dates during 1989, and dates specified during 1988 shall be read as dates during 1990.

VI. AWARD.

For the foregoing reasons, and after taking into account the relevant criteria enumerated in Section 209 of the Taylor Law, the Panel determines that a just and reasonable determination of the matters in dispute between the Town of Tonawanda and the Town of Tonawanda Police Club, is as follows:

(1) Management Rights clause. The Panel declines to revise the language of the management rights clause (§2.01) in the current Agreement.

(2) Zipper clause. The Panel declines to impose a "zipper clause", as proposed by the Town.

(3) Transfers. The Panel declines to revise the transfer clause of the current Agreement in the manner proposed by the Town.

(4) Educational incentive. The Panel declines to impose the "educational incentive" proposal of the Club, but recommends that the parties give the matter their careful attention during the next round of negotiations.

(5) Bullet-proof vests. The parties shall form a Joint Committee on Bullet-Proof Vests, consisting of two members appointed by the Town and two members appointed by the Club. The Committee shall be appointed no later than June 1, 1989. The Joint Committee shall research all matters relevant to the manner of providing bullet-proof vests, the costs of such vests, and rules concerning the wearing of such vests, and issue a Report to the parties, no later than October 1, 1989. The Report is *not* required to be unanimous.

At appropriate times during the months of October 1989 through December 1989, the parties shall undertake negotiations for a Memorandum of Agreement concerning the provision of and wearing of bullet-proof vests, which if agreed to by both parties, shall become effective January 1, 1990.

(6) Computation of daily rate of pay. Section 7.04 of the current Agreement shall be amended as proposed by the Town, so that it shall now read:

Daily rate of pay effective January 1, 1989, shall be obtained by dividing the basic annual salary by 260. Daily rate of pay effective January 1, 1990, shall be obtained by dividing the basic annual salary by 261.

(7) Health Insurance for retirees. Section 11.02 of the current Agreement shall be amended by deleting the entire language of the current provisions and substituting the following language:

The payment of health insurance premiums shall be made on behalf of an employee who has retired and is collecting a New York State Retirement allowance or is receiving an Ordinary/Accidental Disability Retirement allowance and is not employed where similar health insurance is available to him/her without cost, except that when such employment terminates, his/her rights shall be reinstated. Premiums are to be paid during the life of the retired employee or his/her spouse upon the employee's death, but only until he/she remarries or dies. An employee would not be eligible for this benefit if their spouse was receiving equal or better coverage at no cost and could cover our retiring employee. If an employee or spouse is not initially eligible for this benefit because the employee or spouse is receiving equal coverage, but circumstances change where coverage is no longer available without cost, then the employee or spouse would be eligible for town payment of health insurance.

If a National health insurance program of equal coverage is enacted the above provided payment shall cease for retired employees.

(8) Salary. The general salary schedule in the current Agreement shall be amended as follows. Section 7.01 shall be amended to provide that effective January 1, 1989 the basic annual salary schedule effective January 1, 1988 shall be increased by 5.5%; and that section 7.02 shall be amended to provide that effective January 1, 1990, the basic annual salary schedule effective January 1, 1989 shall be increased by 5.5%. Appropriate changes will be made in the listing of "Basic Annual Salaries" in those sections.

(9) Shift Premium pay. The shift premium schedule in §7.07 of the current Agreement shall continue to be in effect for the period from January 1, 1989 through December 31, 1990.

(10) Longevity pay. The longevity schedule in §7.08 of the current Agreement shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

(11) Holidays. The holiday schedule in Section 7.09 of the current Agreement shall continue to be in effect for the period January 1, 1989 through December 31, 1990.

(12) Uniform maintenance. Section 7.15 of the current Agreement, titled "Cleaning Allowance", is amended to provide that the amount received by each Police Officer in 1989 shall be \$600.00, and the amount received in 1990 shall be \$650.00.

The Club proposal with respect to a one time disbursement to officers assigned to the Detective Bureau is denied.

(13) Cost of health insurance. The revision of §11.01, agreed to in prior and separate negotiations, shall be in effect for the period January 1, 1989 through December 31, 1990. Therefore, §11.01 shall now read:

[¶1] The Town shall provide health insurance which shall include Blue Cross benefit coverages identified as Class 4 and 6 (hospital); Class 90 and 91 (medical/surgical); \$100.00 deductible, \$1,000,000 Major Medical Rider, \$2.00 co-pay Prescription Drug Rider, Rider 4, (Emergency Outpatient EKG) Rider 8 (dependent children to age 23), Rider 21 (psychiatric), Rider 22 (ambulatory care).

[¶2] If the monthly premium rates effective January 1, 1989 for the above identified health insurance coverage increases during the life of this Agreement more than twenty-five percent (25%), the increase over the twenty-five percent (25%) will be negotiated by the parties to determine who will pay the additional premium rates.

[¶3] When an eligible employee under the Collective Bargaining Agreement chooses to enroll in a health maintenance organization the Town offers, such as Independent Health Association, Blue Cross' HMO Community Blue or Health Care Plan, Inc., and the monthly premium rate is over the Town's general plan, as provided in the first paragraph of this section, the Town will assume the additional cost, except as provided in Article V, Section 5.06.

(14) Health and Welfare Fund. Section 11.06 of the current Agreement, titled "Dental Fund", shall continue to be in effect for the period from January 1, 1989 through December 31, 1990.

AFFIRMATION

We do hereby affirm upon our oaths as Arbitrators that we are the individuals described in and who executed this instrument, which is our award.

Wade J. Newhouse Date: 4/28/89
Wade J. Newhouse,
Public Panel Member and Chairman

Concur: with all parts EXCEPT AS INDICATED below

Dissent: B. HEALTH INSURANCE FOR RETIREES; C. & A(1) SALARY; F. & A(5) UNIFORM MAINTENANCE (SEE ATTACHED)

Joseph Randazzo Date: 5/3/89
Joseph Randazzo, Esq.
Employer Panel Member

Concur: with all parts

Dissent: _____

Charles Volk Date: 4/28/89
Charles Volk
Employee Organization Panel Member

The dissent on the issues referred to above is based upon the Panel Majoritys' failure to consider the implications of its determination upon the tax base of the Town and that its determination is inconsistent with the evidence submitted, particularly the Town's settlements with its other units. The Majority elimination of the system of utlization of accumulated sick leave for medical insurance purposes is an issue better left to the parties to resolve only through a negotiated agreement. The Majority determination is also devoid of any of the practical considerations regarding the effect upon the Town and its other employees.